

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ASIL L. HUBLEY,

Plaintiff,

v.

SPOKANE COUNTY JAIL,
ADMINISTRATION OFFICERS HS
1808 and 1778, and SEXUAL
ASSAULT RESPONDING OFFICER,

Defendants.

NO: 2:16-CV-58-RMP

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING COMPLAINT WITH
PREJUDICE

Magistrate Judge Mary K. Dimke filed a Report and Recommendation on June 6, 2016. ECF No. 12. Judge Dimke previously found that Plaintiff's Complaint was deficient and failed to state a claim upon which relief could be granted. ECF No. 7. Pursuant to that Order, Plaintiff filed an Amended Complaint. ECF No. 8. Judge Dimke recommends that this Court dismiss Plaintiff's Amended Complaint as Plaintiff has failed to remedy the various deficiencies. ECF No. 12. Plaintiff has objected to the Report and Recommendation insofar as Judge Dimke

ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING COMPLAINT WITH PREJUDICE ~ 1

1 recommends dismissing Plaintiff's Eighth Amendment claim regarding foreign
2 objects in prison food.

3 "[A]n Eighth Amendment violation cannot exist without a culpable state of
4 mind on the part of the person responsible for the deprivation." *LeMaire v. Maass*,
5 12 F.3d 1444, 1451 (9th Cir. 1993). "The Eighth Amendment requires only that
6 prisoners receive food that is adequate to maintain health; it need not be tasty or
7 aesthetically pleasing." *Id.* at 1456. "The fact that the food occasionally contains
8 foreign objects or sometimes is served cold, while unpleasant, does not amount of
9 a constitutional deprivation." *Id.* (quoting *Hamm v. DeKalb Cty.*, 774 F.2d 686–87
10 (11th Cir. 1985)); *see also Lohman v. King Cty. Jail*, C13-2340-JLR-JPD, 2014
11 WL 4187150, at *3 (W.D. Wash. July 1, 2014) (noting that "neither isolated
12 instances of food poisoning, temporary lapses in sanitation, nor occasional service
13 of means contaminated with foreign objects are sufficiently serious to rise to the
14 level of a constitutional violation").

15 Here, Plaintiff merely notes that he occasionally found foreign objects in his
16 prison meals. *See* ECF No. 18. He has not attributed these instances to a specific
17 defendant nor demonstrated that a particular defendant acted with the requisite
18 culpable state of mind. As such, the Court overrules Plaintiff's objections and
19 agrees with Judge Dimke that Plaintiff has failed to state a claim upon which relief
20 can be granted.

1 Having reviewed the Report and Recommendation and the record, the Court
2 adopts the unobjected-to remainder of Judge Dimke's Report and
3 Recommendation.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. The Report and Recommendation, **ECF No. 12**, is **ADOPTED**.

6 2. Plaintiff's Amended Complaint, **ECF No. 8**, is **DISMISSED with**
7 **prejudice**.

8 The District Court Clerk is directed to enter this Order, provide a copy to *pro*
9 *se* Plaintiff, enter judgment accordingly, and **close** the file.

10 **DATED** this 28th day of June, 2016.

11
12 *s/ Rosanna Malouf Peterson*
13 ROSANNA MALOUF PETERSON
14 United States District Judge
15
16
17
18
19
20